

IC 6-9-21

Chapter 21. Delaware County Food and Beverage Tax

IC 6-9-21-1

Application of chapter

Sec. 1. This chapter applies to a county having a population of more than one hundred eighteen thousand (118,000) but less than one hundred twenty thousand (120,000).

As added by P.L. 76-1986, SEC.1. Amended by P.L. 12-1992, SEC.49; P.L. 170-2002, SEC.46.

IC 6-9-21-2

Definitions

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

As added by P.L. 76-1986, SEC.1.

IC 6-9-21-3

Adoption of ordinance

Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

As added by P.L. 76-1986, SEC.1.

IC 6-9-21-4 Version a

Taxable transactions; exceptions

Note: This version of section effective until 1-1-2004. See also following version of this section, effective 1-1-2004.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

As added by P.L.76-1986, SEC.1.

IC 6-9-21-4 Version b

Taxable transactions; exceptions

Note: This version of section effective 1-1-2004. See also preceding version of this section, effective until 1-1-2004.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

As added by P.L.76-1986, SEC.1. Amended by P.L.257-2003, SEC.35.

IC 6-9-21-5

Tax rate; gross retail income

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

As added by P.L.76-1986, SEC.1.

IC 6-9-21-6

Imposition, payment, and collection of tax; filing of return

Sec. 6. The tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the taxes may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

As added by P.L.76-1986, SEC.1.

IC 6-9-21-7

Civic center authority; appointment of members; party affiliation; residency; term; vacancy; vote

Sec. 7. (a) If a tax is levied under section 3 of this chapter, the county fiscal body shall establish a civic center authority, composed of nine (9) members. The nine (9) members shall be appointed as follows:

- (1) Four (4) members appointed by the executive of the largest municipality in the county.
- (2) Three (3) members appointed by the county executive body.
- (3) Two (2) members appointed by the county fiscal body.

(b) No more than five (5) members of the civic center authority may be affiliated with the same political party. All members must reside in the county.

(c) The term of appointment on the authority is two (2) years. However, when the initial appointments are made, each appointing authority shall appoint one (1) member for a one (1) year term and the remaining members for two (2) year terms. Subsequent appointments shall be for two (2) years. A vacancy on the authority shall be filled for the unexpired term by the authority that made the prior appointment.

(d) The affirmative vote of at least five (5) members of the authority is required for the authority to take an action.

As added by P.L.76-1986, SEC.1.

IC 6-9-21-8

Payment of tax receipts to civic center authority

Sec. 8. The amounts received from the taxes imposed under this chapter shall be paid monthly by the treasurer of state to the civic center authority established in the county upon warrants issued by the auditor of state.

As added by P.L.76-1986, SEC.1.

IC 6-9-21-9

Food and beverage tax receipts fund

Sec. 9. (a) If a tax is imposed under section 3 of this chapter, the civic center authority shall establish a food and beverage tax receipts fund.

(b) The authority shall deposit in this fund all amounts received

under this chapter.

(c) Any money earned from the investment of money in the fund becomes a part of the fund.

(d) Money in this fund shall be used by the authority solely to finance, construct, improve, equip, operate, maintain, and promote the use of a civic center or to renovate, equip, operate, maintain, and promote the use of any existing structure that may be used as a civic center. The civic center authority is authorized to enter into lease or contractual arrangements, or both, with governmental, not-for-profit, or other private entities for the purpose of operating, maintaining, and promoting the use of a civic center.

As added by P.L. 76-1986, SEC.1.